STATE OF MICHIGAN

COURT OF APPEALS

CHEYENNE GREGGS, Plaintiff-Appellant,	UNPUBLISHED March 27, 2003
v	No. 234627 Berrien Circuit Court
ANDREWS UNIVERSITY, Defendant-Appellee.	LC No. 98-003625-CK

Before: Whitbeck, C.J., and Cavanagh and Bandstra, JJ.

PER CURIAM.

Plaintiff Cheyenne Greggs appeals as of right the trial court's order granting summary disposition to defendant Andrews University in this case involving claims of defamation and intentional infliction of emotional distress. We affirm.

I. Basic Facts And Procedural History

Andrews University is a private, religious college located in Berrien Springs, which the Seventh-day Adventist Church founded. For the 1996-1997 school year, Andrews University published a student handbook outlining the school's policies. The handbook included a section entitled "Freedom from Harassment,"[1] which listed the school's "Policy Statement on Discrimination and Harassment Including Sexual Harassment." While this policy mainly dealt with employment-related harassment and harassment tied to education, it also provided a basic description of the school's view of sexual harassment:

> It is the policy of Andrews University to provide an educational and employment environment free from all forms of intimidation, hostility, offensive behavior and discrimination, including sexual harassment. Such discrimination or harassment may take the form of unwarranted verbal or physical conduct, verbal or written derogatory or discriminatory statements . . . .
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> * * *

[1] Capitalization altered.

> A student who believes that he or she has been discriminated against or harassed should report the conduct to the chairperson of the department to which the teacher is assigned, and if the chairman is the aggrieving party, to the dean of the college/school in which he or she is enrolled.

The handbook also included a separate section concerning "Code Violations,"[2] explaining:

> Students are expected to conduct themselves at all times in a manner that is honest and is consistent with the traditions and beliefs of the Seventh-day Adventist Church. Students may be disciplined for conduct that is hazardous to the health, safety or well-being of members of the university community; is incompatible with Biblical standards of morality as interpreted by the Seventh-day Adventist Church; or is detrimental to the university's interested *whether such conduct occurs on or off campus* or at university-sponsored events.
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> It is a voted policy of the University that in interpretation of University policies the ruling of the President shall prevail. She/he or the vice-President for Student Services may clarify any disciplinary policy by making a ruling thereon.
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> Dismissal or suspension from the University or lesser disciplinary action may result from the commission of any of the following offenses or violations:
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> * * *
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> 2. Violation of Biblical teaching of sexual morality.
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> * * *
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> 7. Sexual abuse, date/acquaintance rape, or any form of sexual harassment. . . .[3]

In 1996, while Greggs was a graduate student at Andrews University living in a school dormitory, another male student, "John Doe," accused him of sexual assault. Greggs denied that he participated in any assault, and strenuously contested the implication that he was homosexual. However, the alleged assault, which reportedly did not occur on the Andrews University campus, spawned an investigation by the University's Sexual Harassment Committee, which sent its written findings to Greggs:

> On January 7, 1997, allegations of sexual misconduct were officially reported to Hoilette [Vice-President of Student Services]. It was at that time that [John Doe] accused Paul Flyger and Cheyenne Greggs of raping him some time in August of 1996. Dr. Hoilette appointed this Sexual Harassment Committee to investigate the complaint according to the formal procedure outlined in the Andrews University Policy Handbook, policy #3:273:5:3. After careful consideration of the incidents as reported by [John Doe], Paul Flyger and Cheyenne Greggs, and

[2] Capitalization altered.

[3] Emphasis added.

> after reviewing the written reports, interviewing the parties involved, listening to audio tapes presented to the committee, and after assessing the credibility of the parties involved accordingly, the Sexual Harassment Committee finds that:
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> 1) [John Doe] indeed was a victim of unwelcome sexual advances and unwelcome sexual demands for an intimate physical encounter forced on him by both Paul Flyger and Cheyenne Greggs.
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> 2) [John Doe] was the victim, Paul Flyger the aggressor, and Cheyenne Greggs not only a participant, but also a facilitator and orchestrator of the first incident which reportedly took place some time in August of 1996.

Andrews University eventually expelled Greggs, forcing him to move out of the school dormitory.

A year later, in March 1998, Greggs sued Andrews University, alleging defamation and intentional infliction of emotional distress. According to the complaint, the statements in the Sexual Harassment Committee's letter to Greggs indicating that he was "guilty of 'making unwelcome sexual advances and unwelcome sexual demands for an intimate physical encounter forced' on" Doe were false. Likewise, the statement that Greggs "was 'not only a participant, but also a facilitator and orchestrator of the first incident'" was false. All these statements led to the false inference that Greggs was homosexual. The complaint added that Andrews University had published these falsehoods when its employee, a security guard, reported the alleged assault to the Berrien Springs Police Department. The complaint asserted that Assistant Dean of Men, Spencer Carter, had published the statements when Carter "told students that the Plaintiff [Greggs] had been expelled from Andrews for being a homosexual and for raping another male student," and that fellow student and residence hall advisor Dean Vincent David[4] "told students that the Plaintiff [Greggs] was an immoral person" and "had unnatural affection and had been involved in a rape." Greggs again emphasized that these statements were false, and claimed that Andrews University knew these statements to be false when they were made. Greggs asserted that there was no privilege for these statements. As damages, Greggs claimed that he suffered "emotional distress," "humiliation, mortification, and embarrassment," "sleeplessness and anxiety," "[m]oving [c]ost[s]," "loss of time from studies," and other damages.

In support of his intentional infliction of emotional distress claim, Greggs incorporated by reference the allegations related to his defamation claim. He added that Andrews University acted intentionally, and that those actions were "extreme, outrageous, and of such character as not to be tolerated by a civilized society." Greggs asserted that Andrews University engaged in this conduct for an unspecified "ulterior motive," leading to his "severe and serious emotional distress." He cited the same damages he named in his claim for defamation.

Andrews University denied the substantive allegations of wrongdoing in the complaint. In its answer to the complaint, Andrews University also asserted a number of affirmative defenses, including res judicata and collateral estoppel. Andrews University subsequently filed a

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[4] The complaint erroneously referred to him as Dean Vincent *Davis*.

"motion to dismiss." In the motion, Andrews University did not cite MCR 2.116(C), but nevertheless argued that Greggs had failed to state claims for intentional infliction of emotional distress and defamation. Andrews University also maintained that the variety of affirmative defenses it had asserted in the answer to the complaint warranted dismissal.

In its brief supporting the motion to dismiss, Andrews University argued that David, the residence hall advisor, lacked the authority to speak on behalf of the school, and therefore it could not be held liable for his statements. As for the statements by other staff members, the school claimed that those statements were subject to absolute immunity because they involved reporting a crime to the police, or qualified immunity because they were made by school officials in a manner consistent with the disciplinary policy and to protect student safety. Additionally, Andrews University asserted that the allegedly defamatory statements were true, Greggs had failed to present evidence that the conduct at issue met the high threshold for intentional infliction of emotional distress, and that he had not been humiliated or embarrassed because of the statements because he voluntarily told other people about the accusations. Further, Andrews University claimed that collateral estoppel barred this case because an earlier suit had been resolved against Greggs, the school's religious rights under the First Amendment barred the suit, and Greggs' failure to provide adequate discovery also merited dismissing the case. In Andrews University's view, Greggs' complaint "boil[ed] down to [Greggs'] disagreement with the process of student discipline" at the school, which was clearly mandated in this case. Consequently, Andrews University contended that it was entitled to summary disposition under MCR 2.116(C)(4), (7), (8), and(10).

In support of the motion, Andrews University provided the trial court with a copy of its student handbook, redacted excerpts of Greggs' deposition testimony, and three affidavits. The deposition testimony was difficult to understand given its lack of context and the fact that the names of people to whom Greggs referred had been obliterated. The majority of the excerpted text focused on what appeared to be Greggs' view that two other people, ostensibly Flyger and Doe, were having a homosexual relationship, and that one of those two other men incorrectly assumed Greggs was also homosexual. The deposition testimony also referred to audio tape recordings made by someone, which Greggs was evidently using to try to prove that he had not been involved in an assault, but which the school was using to prove that Greggs had attempted to "wear down" Doe.

The first affidavit the University submitted to the trial court was from Dr. Niels-Erik Andreasen, President of Andrews University. Andreasen alleged that the Sexual Harassment committee that investigated the complaint against Greggs had voted unanimously to find him "responsible for sexual harassment of another student." When Greggs appealed the decision to Andreasen, Greggs provided tape recordings,[5] talked to Andreasen, and had his mother call Andreasen. Still, Andreasen "did not feel a reversal of the dismissal was justified," and so he "affirmed the decision of the committee." The second affidavit was from Spencer Carter, the Assistant Dean of Men, who merely averred:

[5] The substance of these recordings is not clear from the record.

> 2. The procedures involved and the process by which he [Greggs] was expelled from Andrews University involved a claim of sexual harassment, which was filed against him by another student. To the best of my knowledge, information, and belief, this complaint was processed in accordance with all policies of Andrews University and in all respects kept confidential in accordance with the policies and procedures of Andrews University.
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> 3. At no time were any of the allegations concerning this sexual harassment claim published by Andrews University or its administrative representatives to any third persons.

The third affidavit was from Dr. Glenda-Mae Greene, Assistant Vice President of Student Services at Andrews University. Her statement was virtually identical to Andreasen's affidavit. Although Greggs had submitted a copy of the letter Andrews University had sent to him reporting the Sexual Harassment Committee's findings against him in another communication with the trial court, he apparently did not submit any additional documentary evidence in opposition to the motion for summary disposition.

The trial court issued a lengthy opinion and order ruling on the school's motion for summary disposition. According to the trial court,[6] Greggs had previously filed suit against Andrews University in Berrien County, alleging that the school had violated his due process rights by forcing him to leave the dormitory after he was expelled from school. The trial court in that case "held that because of the special relationship between a student and a university, [Andrews University] could evict [Greggs] after expelling him from school without following civil eviction procedures." The trial court added that the earlier "decision was upheld on appeal."[7]

In relevant part, the trial court concluded that neither collateral estoppel nor res judicata barred the instant action. In the trial court's view, though the parties in both cases were identical,

> no issues necessarily and actually litigated in the first case make it impossible for [Greggs] to prevail in this second case. Although [Andrews University] argues that the court necessarily had to conclude that the its [sic] disciplinary policy was valid in order to find that [Greggs] was properly evicted after having violated that policy, the resolution of that issue against [Greggs] does not prevent him from prevailing in this defamation case. A review of the court's opinion rendered from the bench in the first case requires the conclusion that the issues in this second

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[6] Apparently, the trial court had additional information regarding the circumstances surrounding this case and the previous lawsuit, although the documents in the record do not reveal all the facts it mentioned in its opinion. Because the trial court kept some of its documents loosely attached to the record with a rubber band, it is possible that some of the documents submitted to the trial court have been lost.

[7] Presumably, the earlier case was filed in district court, and thus the circuit court acted in an appellate capacity. The Court of Appeals did not review this earlier case.

> case were not actually and necessarily litigated in the first case. [Andrews University's] collateral estoppel argument is rejected.

Turning to res judicata, the trial court addressed Andrews University's argument that MCR 2.203(A) required Greggs to

> join all claims resulting from the same incident into his first suit. [Greggs] argues that the first suit was a summary proceeding, and a plaintiff in a summary proceeding is not allowed to add other issues. Specifically MCR 4.201(G) states that parties **may** join money claims if stated separately in the complaint or claims for equitable relief. Therefore, [Greggs'] claims of defamation and intentional infliction of emotional distress could have been joined. The next issue is whether [Greggs] was compelled to join his other claims for relief. Pursuant to MCR 2.203(A)(1), a party **must** join every claim that the pleader has against that opposing party at the time of serving the pleading, if it arises out of the transaction or occurrence that is the subject matter of the action and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction. In this case, the issues arose out of the same transaction or occurrence as the subject matter in the first law suit. Therefore, [Greggs'] joinder of claims was compulsory.[8]

Nevertheless, the trial court concluded, because Andrews University did not object to the failure to join these other claims as required under MCR 2.203, res judicata did not apply.

Following a brief introduction to the issue, the trial court rejected Andrews University's claim that the First Amendment barred this suit, explaining that,

> [b]ecause this case concerns activities of a church in the secular realm (or at least in a field in which there are also secular institutions)[,] the State does not impermissibly impinge on the Church's right to freely exercise its beliefs when the State prohibits defamatory comments by the church's university officials. In this case, the State is not asked to determine whether the University made a correct decision [to expel Greggs], or whether their policies are valid, the question is whether University officials defamed a student with information they received. Therefore, the Court may determine the validity of [Greggs'] defamation claim without violating [Andrews University's] constitutional right to free exercise of religion.

The trial court also addressed the merits of Greggs' claims. Though the trial court believed that some of the statements in the letter with written factual findings could be considered defamatory, it saw no support in the record for Greggs' contention that the school published the letter. In fact, at one point in his deposition, Greggs even testified that he would have to go to the office to view the allegations against him because "'they weren't releasing anything to anybody, . . . no ifs, ands, or buts.'" Greggs also testified that "'Nancy Carbonell [a

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[8] Emphasis in the original.

psychologist and assistant professor at Andrews University] told me that they didn't want the allegations known around the campus because of the nature of the allegations, that [sic] what she told me. And that's why they want me specifically to see the charges.'" The trial court also flatly rejected Greggs' claim that the statements made to the Berrien Springs Police Department were defamatory, instead concluding that those statements were absolutely privileged.

Though Greggs alleged in his complaint that Spencer had made statements that could be considered defamatory, the trial court concluded that Greggs failed to state his claim because he neither gave any details regarding the actual words Spencer allegedly used, nor identified Spencer's audience; Greggs merely said that Spencer made the statements to "'students.'" Though Greggs had named two brothers as "possible witnesses to confirm publication," Andrews University asserted that neither brother confirmed the statement in their depositions.[9] Though the language the trial court used at the outset of this part of its analysis suggested that the trial court would grant summary disposition pursuant to MCR 2.116(C)(8) for Greggs' claim concerning Spencer's statement, it actually concluded that whether Greggs had failed to demonstrate "a genuine . . . material issue of fact" remained to be decided.

As for the statements by the residence hall advisor, the trial court agreed with Greggs that David was an agent of Andrews University and that his statements could be considered defamatory if not true. However, the trial court again noted that Greggs had failed to state in his complaint to whom David had made the statements. Further, the trial court concluded that the statements were subject to a qualified privilege because David and other students had a "shared interest" in the subject matter of the communication. Without any allegation or evidence that David spoke with actual malice in warning other students of someone he and the school believed to pose a real danger to others, the trial court concluded that Greggs failed to "create a genuine issue of material fact," which was necessary to survive the motion for summary disposition. Thus, overall, though the trial court used phrasing in its opinion that suggested that it was considering granting the motion for summary disposition pursuant to MCR 2.116(C)(8) because Greggs' complaint failed to state a claim for defamation, the trial court actually granted summary disposition of this claim pursuant to MCR 2.116(C)(10).

That was not, however, the end of the trial court's opinion. Though Greggs had never pleaded any claims concerning statements Andreasen allegedly made about him to his parents, the trial court noted that Greggs submitted affidavits from his parents by the time of the motion hearing, which suggested that he intended to press claims concerning those statements.[10] While the trial court recognized Greggs' argument that he could amend his pleadings, the trial court concluded that doing so would be futile because a qualified privilege would also apply to these alleged communications. According to the trial court, Andreasen "was communicating information which was of moral and social interest to" Greggs' parents. Though Greggs was an

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[9] The transcripts of these depositions do not appear in the record.

[10] The record includes an unsigned, undated copy of an alleged affidavit from "Fred Greegs" [sic], apparently Greggs' father, in which he states that he had "telephone conversations" with Andreasen, and "[t]hat during those conversations Dr. Andreasen has related to me the substance of the charges against" Greggs. Further, Andreasen stated "that Cheyenne was expelled for participating in the homosexual rape of another student."

adult, "his parents nonetheless [had] a moral and social obligation to care for him." Thus, the trial court granted partial summary disposition to Andrews University.

Because the trial court failed to grant summary disposition of Greggs' intentional infliction of emotional distress claim, Andrews University moved for reconsideration, which the trial court denied. Andrews University then filed a renewed motion for summary disposition concerning this remaining claim. Though Andrews University briefly mentioned collateral estoppel and res judicata in its brief, its primary argument was that Michigan does not recognize a cause of action for intentional infliction of emotional distress. It also argued that Greggs knew of its disciplinary policy, he accepted the policy by enrolling as a student, and that it did nothing more than follow that policy in disciplining him. More importantly, the school asserted, there was no evidence in the record, nor allegations in the complaint, to suggest that its conduct was so extreme that society would consider it outrageous. Rather, the school contended, it had merely acted in a reasonable manner, as it was legally entitled to do. As in its earlier motion, Andrews University also maintained that Greggs' failure to facilitate discovery permitted summary disposition.

In support of the renewed motion, the school submitted an additional affidavit from Carbonell. Carbonell averred that she had chaired the committee that had investigated the sexual harassment complaint against Greggs. She asserted that the committee had "[i]n all respects . . . observed confidentiality throughout the investigation," the investigation was conducted professionally, without "bias, prejudice, or malice," and in an even-handed way. She stated that the committee had undertaken the investigation as an "exercise of the rights" of the school, under its explicit policies and state law. Further, "[n]o part of this investigation was intended to inflict emotional distress upon [Greggs] or any other participant." Finally, she said, during this investigation she did not observe Greggs exhibit "signs of being under any distress other than what would normally be expected to occur when such sensitive matters are being discussed." More importantly, she knew that Greggs had "made threats against the University, and claimed that if the sexual harassment matter was pursued against him he would cause great embarrassment to the University and other students and faculty."

Greggs did not respond to the renewed motion immediately. Instead, the trial court held a hearing. At the hearing, Greggs argued that he should not have to respond to the motion because the trial court had already denied the similar motion raising many of the same arguments earlier in the proceedings, and because the motion was filed after the trial court's deadline for dispositive motions. The trial court ultimately denied the renewed motion to the extent that it cited MCR 2.116(C)(7) and (8) as grounds for summary disposition. However, noting that Greggs had not provided any documentary evidence in opposition to the motion, the trial court indicated that it would delay ruling on whether it should summarily dispose of the intentional infliction of emotional distress claim under MCR 2.116(C)(10).

When Greggs responded to Andrews University's renewed motion, he contended that case law did recognize intentional infliction of emotional distress as a cause of action, which his complaint explicitly pleaded. Greggs contended that the references to collateral estoppel and res judicata in Andrews University's brief were too cursory to be considered, and the school failed to provide any documentary evidence in support as was necessary. Similarly, he argued that the affidavits Andrews University had submitted were too conclusory to support its motion. Greggs added that summary disposition of this claim was inappropriate because his mental state and

Andrews University's intent were in dispute. In an amended brief, Greggs also argued that Andrews University could not shield itself from liability by casting its "evil and immoral" conduct as part of a legal process, and that summary disposition could not be granted for a discovery violation because Andrews University did not specify what constituted those violations.

Greggs attached his own affidavit to his amended brief, which he transmitted to the trial court on the day of the next hearing. In the affidavit, he recapitulated his view that Andrews University was investigating homosexual behavior of students when it elicited false accusations against him. Greggs emphasized that the alleged victim had never reported the event to the police, and refused to cooperate when the police contacted him. Noting his dismissal from school and eviction from the dormitory, Greggs said that the false accusations by the school, which had been published to others, "caused [him] to suffer extreme mental distress, including but not limited to . . . suicidal thoughts," and "[o]verwhelming feelings of self loathing, worthlessness, insecurity, self consciousness and despondency poisoned [his] entire life experience," "compell[ing him] to withdraw from human contact." Greggs challenged the affidavits Andrews University had filed, saying that they were false.

At the second hearing on the renewed motion for summary disposition, the trial court spent some time explaining the legal standard for summary disposition under MCR 2.116(C)(10) as well as the elements of intentional infliction of emotional distress before addressing its comments to the substance of the case:

> Before the filing of Mr. Greggs' affidavit today, the Court had no evidentiary support for the plaintiff's position in this case.
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> However, the Court has the affidavit. And the issue is whether that sets forth a[n] issue of material fact which is potentially outcome determinative, in order to get this case to the jury.
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> And in the Court's judgment that affidavit fails, and does not establish genuine issues of material fact based on the state of this record.
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> I have the affidavit of Ms. Karbonel [sic] setting forth [Andrews University's] position in this matter. I have Mr. Greggs' affidavit. . . . Mr. Greggs is of the view that he has suffered as a result of . . . conduct of the University. However, in large measure the affidavit is his own subjective view about what happened, and does not in this court's opinion set forth genuine issues of material fact which would cause this case to go to trial.
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> * * *
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> And the Court doesn't find any evidentiary support in the record other than Mr. Greggs' assertions that the information was disseminated.

Accordingly, the trial court granted the renewed motion, dismissing the last remaining claim. On appeal, Greggs challenges the trial court's decision to summarily dismiss the action as a whole, largely raising the same arguments he pressed in the trial court.

II. Summary Disposition

A. Standard Of Review

This Court reviews de novo a trial court's order granting summary disposition.[11] Additionally, to the extent that some of the questions that Greggs now presents constitute pure questions of law, review de novo is also appropriate.[12]

B. Legal Standard

In the trial court, Andrews University asserted that the trial court should grant its motions for summary disposition under a number of different subsections of MCR 2.116(C). However, the trial court rejected these grounds, and the way it examined the evidence on the record when ruling on the motions for summary disposition makes clear that it concluded that summary disposition was appropriate under MCR 2.116(C)(10).

A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim.[13] When deciding a motion for summary disposition under MCR 2.116(C)(10), "the trial court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party to determine whether a genuine issue of any material fact exists to warrant a trial.[14] The nonmoving party cannot simply rest on allegations or denials, but must present evidence showing that a material issue of fact is in dispute requiring resolution at trial.[15]

C. Abstract Issues

A number of the issues Greggs presents to us in his brief on appeal ask abstract legal questions without reference to the facts and proceedings of this case. By failing to tie these issues to any alleged errors by the trial court, he has failed to identify any related grounds for relief. Thus, we examine these issues only briefly before addressing the substantive legal questions that relate to whether the trial court erred in granting summary disposition of both claims in this case.

Greggs first contends that intentional infliction of emotional distress is a cognizable cause of action in Michigan. The trial court did not, at any point in its rulings on the motions for summary disposition, suggest that this cause of action is barred in Michigan. Only Andrews University made this argument. Accordingly, this argument cannot be a basis for reversal in this

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[11] *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

[12] See *In re Judge*, 228 Mich app 667, 670; 578 NW2d 704 (1998).

[13] See *Spiek, supra* at 337.

[14] *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999); see also MCR 2.116(G)(5).

[15] *Smith v Globe Life Ins Co*, 460 Mich 446, 455, n 2; 597 NW2d 28 (1999), citing MCR 2.116(G)(4).

case because, even assuming that Greggs is correct, the trial court did not reach a contrary conclusion. Instead, as far as we can tell from its analysis of the claims on the record at the motion hearings, it actually assumed that such a cause of action existed.

Similarly, Greggs asks this Court to determine whether his complaint stated a claim for intentional infliction of emotional distress. The trial court saw no flaw in the manner he pleaded this claim. Nor do we. "The elements of intentional infliction of emotional distress are: (1) extreme and outrageous conduct; (2) intent or recklessness; (3) causation; and (4) severe emotional distress."[16] His complaint alleged with sufficient specificity what he believed to be outrageous conduct, that he believed that Andrews University was acting intentionally, and that this conduct caused him severe emotional distress. In any event, because the trial court did not conclude that he failed to state this claim, this argument is not grounds for reversal.

According to Greggs, Andrews University failed to raise and brief its arguments that res judicata and collateral estoppel barred this action and his claims in a proper manner. Again, the trial court rejected Andrews University's arguments on these grounds. Thus, regardless of whether Andrews University raised these arguments in the proper manner and gave them adequate attention in its various briefs, the schools' failed efforts to dismiss the case on these bases do not constitute grounds for reversal.

Greggs also asks whether "inherently evil and immoral conduct [can] retain its character, even when delivered wrapped in a lawful process." At first blush, we thought that he might be challenging whether Andrews University is entitled to claim an absolute or qualified privilege for its communications relating the allegations that Greggs committed a sexual assault and was homosexual. However, Greggs actually presents a separate issue dealing with privilege. In this instance, Greggs appears to pose a question grounded more in philosophy than the law. Philosophy, fortunately, is not an area over which we exercise any authority.

Further, it appears that Greggs may be arguing that Andrews University cannot rely on the proposition that it "has done no more than insist upon [its] legal rights in a permissible way, even though [it was] aware that such insistence is certain to cause emotional distress" to avoid liability for intentional infliction of emotional distress.[17] He evidently takes issue with this legal proposition as a defense because, he claims, *the school* failed to prove that its conduct was "within 'the reasonable bounds of decency.'" To the extent that this argument that Andrews University failed to satisfy its burden of proof is what Greggs really meant to present as an issue, this contention is patently incorrect. Greggs, as the party opposing the motion for summary disposition, had the obligation of providing sufficient documentary evidence to demonstrate that a factual dispute exists concerning each element of his prima facie case.[18] As an element of that prima facie case, Greggs had to demonstrate that Andrews University's conduct was outrageous

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[16] *Johnson v Wayne Co*, 213 Mich App 143, 161; 540 NW2d 66 (1995).

[17] *Butt v Detroit Automobile Inter-Insurance Exchange*, 129 Mich App 211, 219; 341 NW2d 474 (1983).

[18] See *Smith*, *supra* at 455, n 2; *Quinto v Cross & Peters Co*, 451 Mich 358, 361-362; 547 NW2d 314 (1996).

because that was a material fact at issue in the case.[19] The school was not obligated to prove the inverse – that its conduct was reasonable – although it was free to raise that argument as a defense. Thus, this legal argument does not provide grounds for relief for Greggs.

Greggs asserts that the way Andrews University argued and briefed its contention in the trial court, that the case should be dismissed because Greggs allegedly committed a number of discovery violations, was inadequate. However, as with a number of other issues Greggs now raises, the trial court did not grant summary disposition on this basis. This issue does not merit appellate relief.

D. Affidavits

Greggs argues that the affidavits Andrews University submitted in this case were all conclusory, and therefore failed to support the motions for summary disposition. As Greggs correctly notes, MCR 2.116(G)(3) requires that a party moving for summary disposition provide the trial court with "[a]ffidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted in the motion" "(a) when the grounds asserted do not appear on the face of the pleadings, or" "(b) when judgment is sought based on subrule (C)(10)." The Supreme Court has also made clear that conclusory statements in an affidavit do not satisfy the legal standard for summary disposition.[20] Rather, the allegations and support must include specific details.[21]

Looking at the affidavits Andrews University submitted, it is clear that some of the statements are conclusory. For instance, Carbonell asserted that the Sexual Harassment Committee conducted a "professional investigation," without "bias, prejudice, or malice . . . ." However, she also made a number of factual statements that were appropriate, such as identifying herself as the chair of the committee, noting that the committee permitted Greggs to respond to Doe's allegations, and that its decision had been unanimous. Andreasen gave similarly detailed information about his decision to deny Greggs' appeal. While Carter and Greene's affidavits were brief, there is no way to know whether either of them had any additional information that they should have placed in their respective affidavits.

More importantly, while Greggs challenges the substance of Andrews University's documentary evidence, he fails to recognize that he did not meet his own evidentiary obligation.

> Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists.[22]

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[19] See, generally, *Johnson, supra* at 161.

[20] *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 470; 646 NW2d 455 (2002).

[21] See *id*., citing *Quinto, supra* at 362.

[22] *Quinto, supra* at 362.

Overall, Greggs presented almost no documentary evidence whatsoever. This led to critical deficiencies in his effort to demonstrate that a question of fact existed concerning key elements of each of his claims.

> For instance, Greggs' prima facie case for defamation consisted of four elements:
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> (1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged publication to a third party, (3) *fault amounting at least to negligence on the part of the publisher*, and (4) either actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by the publication (defamation per quod).[23]

To survive summary disposition, Greggs did not have to prove these elements by a preponderance of the evidence; he had to demonstrate that a question of fact existed concerning these elements.[24] There was a question of fact concerning whether the statements regarding Greggs' conduct were false and defamatory. For instance, the record suggested that Greggs had consistently protested any implication that he was homosexual and had been involved in a sexual assault. The handbook also made absolutely clear that individuals who committed sexual harassment or homosexual conduct were not welcome at the school. Thus, if false, these statements fit the definition of a defamatory communication, because they "tend[ed] to lower [Greggs'] reputation in the community" and "deter[ed] third persons from associating or dealing with" him.[25]

Nevertheless, the second and third elements are where Greggs failed. In his complaint, Greggs alleged that Andrews University knew that the statements its agents made were false or were made in reckless disregard for whether the statements were true.[26] Yet, Greggs failed to present any evidence that the school was negligent in making these statements, thereby contradicting the affidavits suggesting that the school conducted a principled investigation, received all relevant evidence, and reached an appropriate conclusion on the basis of that evidence. Moreover, other than the report to the Berrien Springs police, Greggs has never identified to whom Andrews University, through its agents, made these statements. It would not necessarily be fatal to Greggs' claim if he could not name *every* person to whom the school published these statements if he gave other information that would help identify who heard the statements. However, he merely asserted that the statements were made at some undisclosed place and time to "students." For instance, with respect to David's statement, Greggs might have suggested that David made his comment on a particular day to a group of students who lived on

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[23] *Kevorkian v American Medical Ass'n*, 237 Mich App 1, 8-9; 602 NW2d 233 (1999) (emphasis added).

[24] See *Ritchie-Gamester*, *supra* at 76.

[25] *Ireland v Edwards*, 230 Mich App 607, 614; 584 NW2d 632 (1998) ("A communication is defamatory if it tends to lower an individual's reputation in the community or deters third persons from associating or dealing with that individual.").

[26] The language used in the complaint and the trial court's opinions actually tracks the higher malice standard used for public figures. See *Faxon v Michigan Republican State Central Committee*, 244 Mich App 468, 474; 624 NW2d 509 (2001).

the floor where David worked as a residence hall advisor, thus making it possible to determine the identity of those students. Greggs, however, never even narrowed this group of people who allegedly heard these statement to students at Andrews University.[27] Thus, the trial court did not err in granting summary disposition of the defamation claim.

As for Greggs' intentional infliction of emotional distress claim, the same deficiencies in the record exist. While he claims that Andrews University's investigation into Doe's allegations was "evil and immoral," and that the school's intent was in dispute, he presented no evidence that would call into question the school's motivation for launching the investigation or reaching its conclusions. All the record reveals is that Andrews University received a complaint regarding Greggs, it undertook the very process it described in its handbook, it received and weighed conflicting evidence, and it reached a conclusion on the basis of the evidence it found more credible. By enrolling in school, Greggs consented to the disciplinary process he now claims so perverted the truth that it led to the tort of intentional infliction of emotional distress.[28] "[N]o wrong is done to one who consents."[29] The trial court did not err in granting summary disposition of this claim either.

III. Amendment And Privilege

A. Standard Of Review

Greggs argues that the trial court erred in foreclosing his opportunity to amend the complaint to state a claim of defamation for Andreasen's statements to Greggs' parents. We review a trial court's decision to deny a motion to amend to determine whether the trial court abused its discretion.[30]

B. Analysis

MCR 2.116(I)(5) states that "[i]f the grounds asserted" for summary disposition "are based on subrule (C)(8), (9), or (10), the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified." As we have already explained, the trial court granted summary disposition to Andrews University pursuant to MCR 2.116(C)(10). In doing so, the trial court addressed Greggs' argument that he should be allowed to amend his complaint to reflect an additional factual allegation that Andrews University was liable for intentional infliction of emotional distress when Andreasen informed his parents of the claims against him. The trial court concluded that there could be no liability for this conduct because it fell within a qualified privilege.

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[27] See *Rouch v Enquirer & News of Battle Creek Michigan*, 440 Mich 238, 272; 487 NW2d 205 (1992) (Riley, J. concurring).

[28] See *Smith v Calvary Christian Church*, 462 Mich 679, 689; 614 NW2d 590 (2000).

[29] *Id*.

[30] See *Phinney v Perlmutter*, 222 Mich app 513, 523; 564 NW2d 532 (1997).

A qualified privilege "'extends to all communications made bona fide upon any subject matter in which the party communicating has an interest, or in reference to which he has a duty, to a person having a corresponding interest or duty.'"[31]

> The elements of a qualified privilege are (1) good faith, (2) an interest to be upheld, (3) a statement limited in its scope to this purpose, (4) a proper occasion, and (5) publication in a proper manner and to proper parties only.[32]

A plaintiff may "overcome a qualified privilege only by showing that the statement was made with actual malice, i.e., with knowledge of its falsity or reckless disregard of the truth."[33] As the trial court noted, Greggs' parents certainly had a legitimate interest in his well-being, even if they were not duty-bound to provide for him as they were when he was a minor.

Further, the problem with Greggs' argument that the trial court erred in denying him an opportunity to amend his complaint is that, regardless of privilege, he failed to specify what Andreasen allegedly said to his parents and how those statements were false. There is no affidavit from Greggs' mother in the record at all. The record includes only an unsigned, undated affidavit reportedly from his father making the vaguest of statements regarding a discussion he had with Andreasen. Even assuming this was adequate in any sense, the statements Andreasen allegedly made to Greggs' father were substantially true.[34] Doe *had* made "charges" against Greggs, and the school *had* expelled Greggs for what it believed was Greggs' "participati[on] in the homosexual rape of another student." The affidavit did not claim that Andreasen's statements were false. Nor did the affidavit address any of the matters that Greggs had previously claimed were false, such as whether the *substance* of Doe's charges were true, and whether the school's *factual conclusions* regarding Greggs leading to his dismissal were accurate. Greggs has never even suggested what the alleged defamatory statements were. Without more information regarding the statements, the trial court would have erred in granting a motion to amend the complaint because the additional defamation claim would have been as deficient as his other defamation claims. Even though the trial court did not rule on these grounds, it reached the correct conclusion, which we will not disturb.[35]

Affirmed.

/s/ William C. Whitbeck
/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra

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[31] *Timmis v Bennett*, 352 Mich 355, 366; 89 NW2d 748 (1958), quoting *Bacon v Michigan Central Railroad Co*, 66 Mich 166, 170; 33 NW 181 (1887).

[32] *Prysak v RL Polk Co*, 193 Mich App 1, 15; 483 NW2d 629 (1992).

[33] *Id*.

[34] See *Collins v Detroit Free Press, Inc*, 245 Mich App 27, 33; 627 NW2d 5 (2001) ("[S]ubstantial truth is an absolute defense to a defamation claim.").

[35] See *Glazer v Lamkin*, 201 Mich App 432, 437; 506 NW2d 570 (1993).